

**Prevailing Wage Rates and Hours of Labor
For
Municipal Public Works Projects Subject To S. 66.0903, Stats.**

2003-04 Statutes updated through February 1, 2005

66.0903 Municipal prevailing wage and hour scales.

(1) Definitions. In this section:

(a) "Area" means the county in which a proposed project that is subject to this section is located or, if the department determines that there is insufficient wage data in that county, "area" means those counties that are contiguous to that county or, if the department determines that there is insufficient wage data in those counties, "area" means those counties that are contiguous to those counties or, if the department determines that there is insufficient wage data in those counties, "area" means the entire state or, if the department is requested to review a determination under sub. (3) (br), "area" means the city, village or town in which a proposed project that is subject to this section is located.

(b) "Department" means the department of workforce development.

(c) "Hourly basic rate of pay" has the meaning given in s. 103.49 (1) (b).

(cm) "Insufficient wage data" has the meaning given in s. 103.49 (1) (bg).

(d) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.

(e) "Multiple-trade public works project" has the meaning given in s. 103.49 (1) (bm).

(f) "Prevailing hours of labor" has the meaning given in s. 103.49 (1) (c).

(g)

1. Except as provided in subd. 2., "prevailing wage rate" for any trade or occupation engaged in the erection, construction, remodeling, repairing or demolition of any project of public works in any area means the hourly basic rate of pay, plus the hourly contribution for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefit, paid directly or indirectly, for a majority of the hours worked in the trade or occupation on projects in the area.

2. If there is no rate at which a majority of the hours worked in the trade or occupation on projects in the area is paid, "prevailing wage rate" for any trade or occupation engaged in the erection, construction, remodeling, repairing or demolition of any project of public works in any area means the average hourly basic rate of pay, weighted by the number of hours worked, plus the average hourly contribution, weighted by the number of hours worked, for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefit, paid directly or indirectly for all hours worked at the hourly basic rate of pay of the highest-paid 51% of hours worked in that trade or occupation on projects in that area.

(i) "Single-trade public works project" has the meaning given in s. 103.49 (1) (e).

(j) "Truck driver" has the meaning given in s. 103.49 (1) (g).

(3) Prevailing wage rates and hours of labor.

(am) A local governmental unit, before making a contract by direct negotiation or soliciting bids on a contract, for the erection, construction, remodeling, repairing or demolition of any project of public works, including a highway, street or bridge construction project, shall apply to the department to determine the prevailing wage rate for each trade or occupation required in the work contemplated. The department shall conduct investigations and hold public hearings as necessary to define the trades or occupations that are commonly employed on projects that are subject to this section and to inform itself as to the prevailing wage rates in all areas of the state for those trades or occupations, in order to determine the prevailing wage rate for each trade or occupation. The department shall issue its determination within 30 days after receiving the request and shall file the determination with the requesting local governmental unit.

(ar) The department shall, by January 1 of each year, compile the prevailing wage rates for each trade or occupation in each area. The compilation shall, in addition to the current prevailing wage rates, include future prevailing wage rates when those prevailing wage rates can be determined for any trade or occupation in any area and shall specify the effective date of those future prevailing wage rates. If a construction project extends into more than one area there shall be but one standard of prevailing wage rates for the entire project.

(av) In determining prevailing wage rates under par. (am) or (ar), the department may not use data from projects that are subject to this section, s. 103.49 or 103.50 or 40 USC 276a unless the department determines that there is insufficient wage data in the area to determine those prevailing wage rates, in which case the department may use data from projects that are subject to this section, s. 103.49 or 103.50 or 40 USC 276a.

(bm) Any person may request a recalculation of any portion of an initial determination within 30 days after the initial determination date if the person submits evidence with the request showing that the prevailing wage rate for any given trade or occupation included in the initial determination does not represent the prevailing wage rate for that trade or occupation in the area. The evidence shall include wage rate information reflecting work performed by persons working in the contested trade or occupation in the area during the current survey period. The department shall affirm or modify the initial determination within 15 days after the date on which the department receives the request for recalculation.

(br) In addition to the recalculation under par. (bm), the local governmental unit that requested the determination under this subsection may request a review of any portion of a determination within 30 days after the date of issuance of the determination if the local governmental unit submits evidence with the request showing that the prevailing wage rate for any given trade or occupation included in the determination does not represent the prevailing wage rate for that trade or occupation in the city, village or town in which the proposed project is located. That evidence shall include wage rate information for the contested trade or occupation on at least 3 similar projects located in the city, village or town where the proposed project is located and on which some work has been performed during the current survey period and which were considered by the department in issuing its most recent compilation under par. (ar). The department shall affirm or modify the determination within 15 days after the date on which the department receives the request for review.

(dm) A reference to the prevailing wage rates determined by the department or a local governmental unit exempted under sub. (6) and to the prevailing hours of labor shall be published in the notice issued for the purpose of securing bids for the project. If any contract or subcontract for a project of public works, including a highway, street or bridge construction project, is entered into, the prevailing wage rates determined by the department or exempted local governmental unit and the prevailing hours of labor shall be physically incorporated into and made a part of the contract or subcontract, except that for a minor subcontract, as determined by the department, the department shall prescribe by rule the method of notifying the minor subcontractor of the prevailing wage rates and prevailing hours of labor applicable to the minor subcontract. The prevailing wage rates and prevailing hours of labor applicable to a contract or subcontract may not be changed during the time that the contract or subcontract is in force. No person performing the work described in sub. (4) may be paid less than the prevailing wage rate in the same or most similar trade or occupation determined under this subsection; nor may he or she be permitted to work a greater number of hours per day or per week than the prevailing hours of labor, unless he or she is paid for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times his or her hourly basic rate of pay.

(4) Covered employees.

(a) Subject to par. (b), all of the following employees shall be paid the prevailing wage rate determined under sub. (3) and may not be permitted to work a greater number of hours per day or per week than the prevailing hours of labor, unless they are paid for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times their hourly basic rate of pay:

1. All laborers, workers, mechanics and truck drivers employed on the site of a project that is subject to this section.

2. All laborers, workers, mechanics and truck drivers employed in the manufacturing or furnishing of materials, articles, supplies or equipment on the site of a project that is subject to this section or from a facility dedicated exclusively, or nearly so, to a project that is subject to this section by a contractor, subcontractor, agent or other person performing any work on the site of the project.

(b) Notwithstanding par. (a) 1., a laborer, worker, mechanic or truck driver who is regularly employed to process, manufacture, pick up or deliver materials or products from a commercial establishment that has a fixed place of business from which the establishment regularly supplies processed or manufactured materials or products is not entitled to receive the prevailing wage rate determined under sub. (3) or to receive at least 1.5 times his or her hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor unless any of the following applies:

1. The laborer, worker, mechanic or truck driver is employed to go to the source of mineral aggregate such as sand, gravel or stone that is to be immediately incorporated into the work, and not stockpiled or further

transported by truck, pick up that mineral aggregate and deliver that mineral aggregate to the site of a project that is subject to this section by depositing the material substantially in place, directly or through spreaders from the transporting vehicle.

2. The laborer, worker, mechanic or truck driver is employed to go to the site of a project that is subject to this section, pick up excavated material or spoil from the site of the project and transport that excavated material or spoil away from the site of the project.

(c) A truck driver who is an owner-operator of a truck shall be paid separately for his or her work and for the use of his or her truck.

(5) Nonapplicability. This section does not apply to any single-trade public works project, including a highway, street or bridge construction project, for which the estimated project cost of completion is below \$30,000 or an amount determined by the department under this subsection or to any multiple-trade public works project, including a highway, street or bridge construction project, for which the estimated project cost of completion is below \$150,000 or an amount determined by the department under this subsection. The department shall adjust those dollar amounts every year, the first adjustment to be made not sooner than December 1, 1997. The adjustments shall be in proportion to any change in construction costs since the effective date of the dollar amounts established under this subsection

(6) Exemptions. The department, upon petition of any local governmental unit, shall issue an order exempting the local governmental unit from applying to the department for a determination under sub. (3) when it is shown that an ordinance or other enactment of the local governmental unit sets forth standards, policy, procedure and practice resulting in standards as high or higher than those under this section.

(8) Posting. For the information of the employees working on the project, the prevailing wage rates determined by the department or exempted local governmental unit, the prevailing hours of labor and the provisions of subs. (10) (a) and (11) (a) shall be kept posted by the local governmental unit in at least one conspicuous and easily accessible place on the site of the project or, if there is no common site on the project, at the place normally used by the local governmental unit to post public notices.

(9) Compliance.

(a) When the department finds that a local governmental unit has not requested a determination under sub. (3) (am) or that a local governmental unit, contractor or subcontractor has not physically incorporated a determination into a contract or subcontract as required under this section or has not notified a minor subcontractor of a determination in the manner prescribed by the department by rule promulgated under sub. (3) (dm), the department shall notify the local governmental unit, contractor or subcontractor of the noncompliance and shall file the determination with the local governmental unit, contractor or subcontractor within 30 days after the notice.

(b) Upon completion of a project and before receiving final payment for his or her work on the project, each agent or subcontractor shall furnish the contractor with an affidavit stating that the agent or subcontractor has complied fully with the requirements of this section. A contractor may not authorize final payment until the affidavit is filed in proper form and order.

(c) Upon completion of a project and before receiving final payment for his or her work on the project, each contractor shall file with the local governmental unit authorizing the work an affidavit stating that the contractor has complied fully with the requirements of this section and that the contractor has received an affidavit under par. (b) from each of the contractor's agents and subcontractors. A local governmental unit may not authorize a final payment until the affidavit is filed in proper form and order. If a local governmental unit authorizes a final payment before an affidavit is filed in proper form and order or if the department determines, based on the greater weight of the credible evidence, that any person performing the work specified in sub. (4) has been or may have been paid less than the prevailing wage rate or less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor and requests that the local governmental unit withhold all or part of the final payment, but the local governmental unit fails to do so, the local governmental unit is liable for all back wages payable up to the amount of the final payment.

(10) Records; inspection; enforcement.

(a) Each contractor, subcontractor or contractor's or subcontractor's agent performing work on a project that is subject to this section shall keep full and accurate records clearly indicating the name and trade or occupation of every person performing the work described in sub. (4) and an accurate record of the number of hours worked by each of those persons and the actual wages paid for the hours worked.

(b) The department or the contracting local governmental unit may demand and examine, and every contractor, subcontractor and contractor's or subcontractor's agent shall keep, and furnish upon request by the department or local governmental unit, copies of payrolls and other records and information relating to the wages paid to persons performing the work described in sub. (4) for work to which this section applies. The department may inspect records in the manner provided in ch. 103. Every contractor, subcontractor or agent performing work on a project that is subject to this section is subject to the requirements of ch. 103 relating to the examination of records.

(c) If requested by any person, the department shall inspect the payroll records of any contractor, subcontractor or agent performing work on a project that is subject to this section to ensure compliance with this section. If the contractor, subcontractor or agent subject to the inspection is found to be in compliance and if the person making the request is a person performing the work specified in sub. (4), the department shall charge the person making the request the actual cost of the inspection. If the contractor, subcontractor or agent subject to the inspection is found to be in compliance and if the person making the request is not a person performing the work specified in sub. (4), the department shall charge the person making the request \$250 or the actual cost of the inspection, whichever is greater.

(d) Section 103.005 (5) (f), (11), (12) and (13) applies to this section, except that s. 103.005 (12) (a) does not apply to any person who fails to provide any information to the department to assist the department in determining prevailing wage rates under sub. (3) (am) or (ar). Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section, including proceedings under sub. (11) (a).

(11) Liability and penalties.

(a) Any contractor, subcontractor or contractor's or subcontractor's agent who fails to pay the prevailing wage rate determined by the department under sub. (3) or who pays less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor is liable to any affected employee in the amount of his or her unpaid wages or his or her unpaid overtime compensation and in an additional equal amount as liquidated damages. An action to recover the liability may be maintained in any court of competent jurisdiction by any employee for and in behalf of that employee and other employees similarly situated. No employee may be a party plaintiff to the action unless the employee consents in writing to become a party and the consent is filed in the court in which the action is brought. Notwithstanding s. 814.04 (1), the court shall, in addition to any judgment awarded to the plaintiff, allow reasonable attorney fees and costs to be paid by the defendant.

(b)

1. Except as provided in subds. 2., 4. and 6., any contractor, subcontractor or contractor's or subcontractor's agent who violates this section may be fined not more than \$200 or imprisoned for not more than 6 months or both. Each day that any violation continues is a separate offense.

2. Whoever induces any person who seeks to be or is employed on any project that is subject to this section to give up, waive or return any part of the wages to which the person is entitled under the contract governing the project, or who reduces the hourly basic rate of pay normally paid to a person for work on a project that is not subject to this section during a week in which the person works both on a project that is subject to this section and on a project that is not subject to this section, by threat not to employ, by threat of dismissal from employment or by any other means is guilty of an offense under s. 946.15 (1).

3. Any person employed on a project that is subject to this section who knowingly permits a contractor, subcontractor or contractor's or subcontractor's agent to pay him or her less than the prevailing wage rate set forth in the contract governing the project, who gives up, waives or returns any part of the compensation to which he or she is entitled under the contract, or who gives up, waives or returns any part of the compensation to which he or she is normally entitled for work on a project that is not subject to this section during a week in which the person works both on a project that is subject to this section and on a project that is not subject to this section, is guilty of an offense under s. 946.15 (2).

4. Whoever induces any person who seeks to be or is employed on any project that is subject to this section to

permit any part of the wages to which the person is entitled under the contract governing the project to be deducted from the person's pay is guilty of an offense under s. 946.15 (3), unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 276c.

5. Any person employed on a project that is subject to this section who knowingly permits any part of the wages to which he or she is entitled under the contract governing the project to be deducted from his or her pay is guilty of an offense under s. 946.15 (4), unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 276c.

6. Subdivision 1. does not apply to any person who fails to provide any information to the department to assist the department in determining prevailing wage rates under sub. (3) (am) or (ar).

(12) Debarment.

(a) Except as provided under pars. (b) and (c), the department shall notify any local governmental unit applying for a determination under sub. (3) and any local governmental unit exempted under sub. (6) of the names of all persons whom the department has found to have failed to pay the prevailing wage rate determined under sub. (3) or has found to have paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor at any time in the preceding 3 years. The department shall include with each name the address of the person and shall specify when the person failed to pay the prevailing wage rate and when the person paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor. A local governmental unit may not award any contract to the person unless otherwise recommended by the department or unless 3 years have elapsed from the date the department issued its findings or the date of final determination by a court of competent jurisdiction, whichever is later.

(b) The department may not include in a notification under par. (a) the name of any person on the basis of having let work to a person whom the department has found to have failed to pay the prevailing wage rate determined under sub. (3) or has found to have paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor.

(c) This subsection does not apply to any contractor, subcontractor or agent who in good faith commits a minor violation of this section, as determined on a case-by-case basis through administrative hearings with all rights to due process afforded to all parties or who has not exhausted or waived all appeals.

(d) Any person submitting a bid or negotiating a contract on a project that is subject to this section shall, on the date the person submits the bid or negotiates the contract, identify any construction business in which the person, or a shareholder, officer or partner of the person, if the person is a business, owns, or has owned at least a 25% interest on the date the person submits the bid or negotiates the contract or at any other time within 3 years preceding the date the person submits the bid or negotiates the contract, if the business has been found to have failed to pay the prevailing wage rate determined under sub. (3) or to have paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor.

(e) The department shall promulgate rules to administer this subsection.

History: 1971 c. 154, 307; 1973 c. 181; 1977 c. 29; 1985 a. 159; 1989 a. 56, 228; 1991 a. 316; 1993 a. 112, 399; 1995 a. 27 ss. 3318, 3319, 9130 (4); 1995 a. 215; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 s. 335; Stats. 1999 s. 66.0903; 1999 a. 186 ss. 51 to 60.

Cross Reference: See also chs. DWD 290 and 294, Wis. adm. code.

The liability of a prime contractor for damages to employees of a subcontractor under s. 779.14 (2) did not include wage penalties under s. 66.293 (3) [now sub. (11)]. Consent to be a named party under sub. (3) [now sub. (11)] may occur after one year if the action is for damages under this section in the name of the plaintiffs and other similarly situated employees and was filed within the one-year time period. *Strong v. C.I.R., Inc.* 184 Wis. 2d 619, 516 N.W.2d 719 (1994).

In determining whether a project constitutes a public work, each project must be evaluated separately considering the character, ownership, use, and maintenance of the project, and whether the work is being done for the appropriate municipality. *Elliott v. Morgan*, 214 Wis. 2d 253, 571 N.W.2d 866 (Ct. App. 1997), 96-1904.

Individual employees have a strong privacy interest in their names, particularly when coupled with their occupation, wages and hours, and place of employment, and the public has a strong interest in protecting that privacy. That public interest substantially outweighs the public interest favoring disclosure of the names in a public records request for wage records of private employees performing a government contract subject to this section. *Kraemer Brothers, Inc. v. Dane County*, 229 Wis. 2d 86, 599 N.W.2d 75 (Ct. App. 1999), 98-3061.

ERISA does not preempt the prevailing wage law. *State v. Phillips*, 2000 WI App 184, 238 Wis. 2d 279, 617 N.W.2d 522, 99-3197.

This section is inapplicable to a private corporation contracting for a medical center. 61 Atty. Gen. 426.

Typical turnkey projects financed by industrial development revenue bonds under s. 66.521 are not subject to s. 66.293 (3), concerning prevailing wage rates. 63 Atty. Gen. 145.

Municipalities are subject to sub. (3) on contracts for any project of public works, even if done by the turnkey method. 64 Atty. Gen. 100.

For additional information, Please contact us.

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